

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

DAVID JONES
ADC #94099

PLAINTIFF

V. 5:12CV00456 SWW/JTR

MEGAN BOND, Varner Unit Infirmary,
Arkansas Department of Correction, et al.

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Susan Webber Wright. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the

United States District Judge, you must, at the same time that you file your written objections, include a “Statement of Necessity” that sets forth the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the requested hearing before the United States District Judge was not offered at the hearing before the Magistrate Judge.
3. An offer of proof setting forth the details of any testimony or other evidence (including copies of any documents) desired to be introduced at the requested hearing before the United States District Judge.

From this submission, the United States District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

I. Introduction

Plaintiff, David Jones, has filed this *pro se* § 1983 action alleging that Defendants violated his constitutional rights. He has recently filed two dispositive Motions, which should be denied for the following reasons.

II. Plaintiff's Motion for Judgment on the Pleadings

Plaintiff has failed a Motion arguing that he is entitled to a judgment in his favor on the inadequate medical care, excessive force, and failure to protect claims he has raised against separate Defendants Iko, Hubbard, Demery, Clemons, and Singleton. *See Doc. #33.* Judgment on the pleadings, under Fed. R. Civ. P. 12(c), "is appropriate where no material issue of fact remains to be resolved and the movant is entitled to judgment as a matter of law." *Clemons v. Crawford*, 585 F.3d 1119, 1124 (8th Cir. 2009); *Faibisch v. Univ. of Minn.*, 304 F.3d 797, 803 (8th Cir. 2002). Defendants Iko, Hubbard, Demery, Clemons, and Singleton have filed Answers hotly contesting the factual and legal basis of Plaintiff's claims against them. *See Docs. #14 and #17.* Additionally, the parties are just beginning discovery, and Plaintiff has not provided any evidence to support his claims. Thus, judgment in his favor is not appropriate at this time. Accordingly, his Motion for Judgment on the Pleadings should be denied.

III. Plaintiff's Motion for Default Judgment

Plaintiff has filed a Motion arguing that he is entitled to default judgment against separate Defendants Bond and Maloney because they have not timely filed an Answer. *See Doc. #34.*

A default judgment is appropriate when a defendant fails, without sufficient

cause, to file an answer or responsive pleading within twenty-one days of being served with the summons and complaint. *See Fed. R. Civ. P. 12(a)(1)(A) and 55; Stephenson v. El-Batrawi*, 524 F.3d 907, 912-14 (2008).

On April 24, 2013, the Court ordered the U.S. Marshals to serve Defendants Bond and Maloney at their sealed private addresses. *See Doc. #23*. As of the date of this Recommended Disposition, the U.S. Marshals have not completed service on either Defendant Bond or Maloney.¹ Thus, Plaintiff is not entitled to a default judgment against them.

IV. Conclusion

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's Motion for Judgment on the Pleadings (Doc. #33) be DENIED.
2. Plaintiff's Motion for Default Judgment (Doc. #34) be DENIED.
3. The Court CERTIFY, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting this Recommended Disposition not be taken in good faith.

¹ In other words, the 21 days for Defendants Bond and Maloney to file their Answer, or other responsive pleading, starts when the U.S. Marshals *complete* service on them, and not when the Court orders service.

Dated this 6th day of May, 2013.



UNITED STATES MAGISTRATE JUDGE